

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MELINDA J. CARR and ALISTAIR P. CARR,

Plaintiffs,

v.

ORDER

DEPARTMENT OF PUBLIC INSTRUCTION
and NEW GLARUS SCHOOL DISTRICT,

17-cv-413-wmc

Defendants.

Plaintiffs Melinda J. Carr and Alistair P. Carr move for entry of default against defendant New Glarus School District. Dkts. 11 and 12. In support of their motions, plaintiffs argue that defendant is in default because defendant failed to serve plaintiffs with a copy of its answer on or before July 28, 2017. Plaintiffs acknowledge that postage was added to the envelope containing defendant's answer on July 28, 2017. However, plaintiffs argue that defendant did not place the envelope in the mail stream until July 29, 2017—one day past the filing deadline—and as a result, plaintiffs did not receive a copy of defendant's answer until July 31, 2017.

I conclude that defendant has met its deadline by filing an answer with the court on July 28, 2017; and that under Rule 5(b)(2)(C) of the Federal Rules of Civil Procedure, defendant has properly and timely served plaintiffs by placing a copy of its answer addressed to plaintiffs in the mail on July 28, 2017, as indicated in defendant's certificate of service. *See* dkt. 10. Furthermore, even if defendant's filing was mailed to plaintiffs one day past its answer deadline, the delay was very brief and not unduly prejudicial to plaintiffs. Therefore, plaintiffs' motion for entry of default must be denied.

ORDER

IT IS ORDERED that plaintiffs Melinda J. Carr and Alistair P. Carr's requests for entry of default as to defendant New Glarus School District, Dkts. 11 and 12, are DENIED.

Entered this 9th day of August, 2017.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge